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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL
DEFENSE CENTER, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS, et al.,

Defendants,

and

CITY OF SALEM and MARION COUNTY,

Defendant-Intervenors.

Case No.: 3:18-cv-00437-HZ

STIPULATION REGARDING CASE
MANAGEMENT

Plaintiffs Northwest Environmental Defense Center, WildEarth Guardians, and Native Fish Society (collectively, “Plaintiffs”), Federal Defendants the United States Army Corps of Engineers and National Marine Fisheries Service (collectively, “Federal Defendants”), and Defendant-

Intervenors City of Salem and Marion County (“Defendant-Intervenors”) hereby stipulate to the terms and deadlines outlined below regarding case management. The parties respectfully request that the Court enter an order adopting this stipulation.

Stipulation

The parties agree that the case should be bifurcated into two phases: liability and, if necessary, remedy. The following briefing schedule will be used to resolve the merits of Plaintiffs’ and Defendant-Intervenors’ claims as to liability:

1. June 28, 2019 – Federal Defendants will provide Plaintiffs, Defendant-Intervenors, and the Court with a copy of the documents that the Corps and NMFS assert constitute the administrative records for the claims alleged in Plaintiffs’ complaint (ECF 1).¹ Federal Defendants will also produce a privilege log for any documents that are withheld, a certification of the materials included in these records, and the date that the agency used as a cut-off for including materials in the records.

2. September 25, 2019 – Plaintiffs will file a motion for summary judgment on their claims. Defendant-Intervenors may file a motion for summary judgment on the merits of their cross claims.

3. November 6, 2019 – Federal Defendants will file their combined motion for summary judgment on Plaintiffs’ claims and response in opposition to Plaintiffs’ motion for summary judgment. Federal Defendants will also file a motion for summary judgment on Defendant-Intervenors’ cross claims (and combine it with an opposition to Defendant-Intervenors’

¹ By stipulating to this process, Plaintiffs and Defendant-Intervenors are not agreeing that there is any administrative record—as that term is defined under the Administrative Procedure Act—for their claims against the Corps.

motion for summary judgment, if any, filed by September 25, 2019). Plaintiffs and Defendant-Intervenors may each file a brief that responds to the other party's motion for summary judgment.

4. December 13, 2019 – Plaintiffs will file a combined opposition to Federal Defendants' motion for summary judgment on Plaintiffs' claims and reply in support of Plaintiffs' motion for summary judgment. Defendant-Intervenors will file an opposition to Federal Defendants' motion for summary judgment on the cross claims (and combine it with a reply in support of Defendant-Intervenors' motion for summary judgment, if one was filed).

5. January 15, 2019 – Federal Defendants will file a reply in support of their motion for summary judgment on Plaintiffs' claims as well as a reply in support of their motion for summary judgment on Defendant-Intervenors' cross claims.

6. January 29, 2020 – The Court holds a hearing on the parties' motions for summary judgment.

The parties will forego seeking discovery during the liability phase of this case to resolve the case expeditiously and to meet the Court's schedule for dispositive motion briefing this fall and a hearing on January 29, 2020. By doing so, Plaintiffs and Defendant-Intervenors maintain that the scope of review for their Endangered Species Act claims against the Corps is not limited to an administrative record, making discovery available. *See, e.g., W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 476-77, 497 (9th Cir. 2011); *Willamette Riverkeeper et al. v. U.S. Army Corps of Engineers*, No. 6:17-cv-00801-MC, ECF No. 28 (D. Or. Feb. 28, 2018).

The parties remain free to introduce other evidence in support of their positions on the merits. The parties do not waive any claim or defense relating to such evidence.

If the Court issues a ruling on the parties' cross-motions for summary judgment that demonstrates a remedy is warranted, the parties will confer about a case management schedule for

the remedy phase. The parties reserve the right to seek discovery relating to potential remedies and request that the Court hold an evidentiary hearing to resolve the remedy phase.

Dated: May 13, 2019

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/s/ Kaitlyn Poirier

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CERTIFICATE OF SERVICE

I certify that on May 13, 2019, the foregoing was electronically filed through the Court's electronic filing system, which will generate automatic service on all parties enrolled to receive such notice.

/s/ Kaitlyn Poirier

Kaitlyn Poirier

Trial Attorney, U.S. Department of Justice